IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

Nahar Singh Vs. The State of Rajasthan
(D.B. CRIMINAL APPEAL NO.482/2002)

D.B. Criminal Appeal under Section 374(2) Cr.P.C. against the judgment dt.12.6.2002 passed by the Additional Sessions Judge (Fast Track), Pratapgarh in Sessions Case No.43/01.

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Date of Judgment: August 14, 2006

P R E S E N T

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE R.P.VYAS

Mr.M.K.Garg, for the appellants
Mr.J.P.S.Choudhary, Public Prosecutor

BY THE COURT: **(PER HON'BLE MR.MATHUR J.)**

1. This appeal is directed against the judgment dated 12.6.2002 passed by the Additional Sessions (Fast Track), Pratapgarh convicting the appellant Nahar Singh of offence under Sections 302 & 120-B I.P.C. and sentencing him to imprisonment for life and to pay a fine of Rs.500/-; in default of payment to further

undergo one month rigorous imprisonment on each count.

2. The appellant Nahar Singh was put to trial on the charge of murder of his uncle Devi Singh. It revealed during trial that deceased Devi Singh, P.W.5 Mokad Singh and father of the appellant Madhu Singh were three brothers. Mokad Singh and Devi Singh were not having any issue. Thus, appellant Nahar Singh is the only issue among the three brothers. On 20.8.98 the appellant Nahar Singh submitted a written report Ex.P20 at Police Station, Nikum, District, Chittorgarh stating inter alia that in the night at about 1 A.M. he was awakened from sleep by a wavering cry of the goat. He got up and went inside the house. It was found that some bricks from the roof were removed. He raised voice, which attracted the villagers namely Mohanlal, Satya Narain, Sohanlal etc. He along with the other villagers went in search of the miscreants. During search when they reached on the field of his uncle Devi Singh, it was found that the gate of the house was open and the other household articles were lying scattered. One of the she-goat was also missing. His uncle Devi Singh was lying injured on the cot. He made

arrangement for sending his uncle to the hospital in a tractor. On way he succumbed to the injuries. On this information police registered a case for offence under Section 460 I.P.C. and proceeded with investigation. The police prepared the site plan and the inquest memo. The dead body was sent for post-mortem. P.W.13 Dr.Gyan Mal Sankhla conducted the post-mortem on the dead body of deceased Devi Singh vide Ex.P18. He noticed the following injuries on his person:-

> (1) A lacerated wound through and through 3 cm x 1½ cm over pinna of right ear.
>
> (2) Incised wound 2½ cm x 1 cm x bone deep over right parietal region. On cut section there is fracture of right parietal bone with surrounding haematoma.
>
> (3) Incised wound 1 cm x ¾ cm x 1 cm over right temporal region on cut section there is fracture of right temporal bone with surrounding haematoma.
>
> (4) A gross deformity over distal 1/3rd of right forearm. On cut section there is fracture of distal 1/3rd of right radius case and ulna bones. Haematoma present at the site of fracture. The muscle arteries, nerves and other structures are torned due to end of fractured bone.

In his opinion the cause of death of deceased Devi Singh was due to excessive haemorrhage present over scalp resulting into shock, syncope and coma.

3. After six months of the incident i.e. on 5.2.99 the statement of the minor daughter of the appellant namely Sugna was recorded. On 6.2.99 the police produced Mst.Sugna before the court of Judicial Magistrate First Class, Chhoti Sadri for recording of her statement under Section 164 Cr.P.C. However, she refused to get her statement recorded on the pretext that she was not well. On 11.2.99 another typed application Ex.P27 was submitted bearing the signatures of P.W.1 Sugna Kunwar that she was prepared to get her statement recorded. The learned Magistrate directed the police to produce police diary on 12.2.99 the statement of P.W.1 Sugna Kunwar was recorded under Section 164 Cr.P.C. vide Ex.P28. She alleged to have stated that on the date of incident she had gone to the field for grazing cattle. On return, she found some guests at the residence. She prepared tea for the guests, which was offered to them by her father appellant Nahar Singh. The guests left the house and again returned at 7 P.M. After taking dinner they went to sleep outside the house. She went to sleep along with her sister Leela and her father inside the house. At about 1 A.M. She was awakened on raising voice of his father appellant Nahar Singh. Her father shouted that

three persons have killed Devi Singh. She inquired about the missing cattle from her father. Thereafter her father removed the bricks from the roof. His father asked her as well to raise the voice, which attracted Gopilal, Ratanlal etc. Every body in the locality had assembled but Devi Singh had not arrived. Thus, all the persons went to his house. They found that Devi Singh was lying injured. He advised the villagers to take Devi Singh to the hospital in a tractor. However, he died on the spot. She also stated that she did not disclose this fact on earlier occasion because of the pressure of her father. In view of the statement of P.W.1 Sugna Kunwar the appellant was arrested on 14.2.99 vide Ex.P25. In pursuance of the information given by the appellant the police recovered a bloodstained lathi. After usual investigation police laid charge-sheet against the appellant for offence under Section 302/120-B I.P.C. on 12.5.99.

4. The appellant pleaded not guilty and claimed trial. In support of the case prosecution examined as many as 21 witnesses. In statement under Section 313 of the Code of Criminal Procedure the appellant denied the correctness of the prosecution evidence appearing

against him. In defence he examined himself as D.W.1. He also examined Kalu Singh as D.W.2 and Moolchand as D.W.3. He deposed that he has lodged the First Information Report Ex.P20 at Police Station, Nikum on 20.8.98. However, the investigation was misdirected at the instancve of one Ratan Singh a police constable at the same police station. At the instance of Ratan Singh he along with his daughter Sugna Kunwar was taken in custody by the police. They were kept in custody for about 10 days. The police got a false and fabricated statement of his daughter under coercion implicating him. When her daughter was produced before the court, she refused to give the statement. She was again brought to the Police Station. She was being tortured and threatened. Subsequently, under coercion her statement under Section 164 Cr.P.C. was got recorded. He had no quarrel with his deceased uncle. His son was adapted by deceased Devi Singh. The police deliberately at the instance of Ratan Singh did not investigate on the First Information Report lodged by him. In the cross examination he denied the suggestion that he killed Devi Singh with a view to grab his land.

5. The prosecution sought to prove the case against

the appellant relying on the following piece of circumstances:-

(1) The statement of P.W.1 Sugna Kunwar recorded under Section 164 Cr.P.C.

(2) The appellant misguided the police by filing a false and fabricated F.I.R.

(3) Conduct of the appellant in not taking the injured Devi Singh to the hospital.

(4) Recovery of the bloodstained lathi.

6. As far as the first circumstance is concerned, P.W.1 Sugna Kunwar has not supported the prosecution case, as such she was declared hostile. As such the trial court has not relied upon this piece of evidence. We have perused the statement of Sugna Kunwar as well as the proceedings of the recording of her statement under Section 164 Cr.P.C. The statement of Sugna Kunwar has been recorded after six months. It appears that she was not prepared to give any statement before the police. The statement of D.W.1 Nahar Singh is supported by the statement of D.W.2 Kalu Singh. He has stated that appellant Nahar Singh and his daughter P.W.1 Sugna Kunwar were being tortured by the police at the Police

Station at the instance of Ratan Singh. D.W.3 Moolchand stated that the relations between the deceased Devi Singh and Nahar Singh were cordial.

7. As regards the second circumstance, as the prosecution has failed to show that it was the appellant who committed the murder, as such it cannot be said that the F.I.R. Ex.P20 lodged by the appellant was false. The appellant in his statement has taken a stand that the police has not fairly investigated the F.I.R. Lodged by him.

8. As regards the third circumstance, there is enough evidence to show that the appellant had arranged the tractor for sending the injured Devi Singh to the hospital but he succumbed to the injuries. Thus, this circumstance also cannot be said to be incriminating against the appellant.

9. The last circumstance relied upon by the prosecution is recovery of the lathi. The lathi alleged to have been recovered from the house of the appellant. It is difficult to comprehend that the appellant will keep a bloodstained lathi in his house for more than six

months. It may be stated that the incident is of 20th August, 1998. The alleged recovery is of 15.2.99. Thus, the evidence of recovery of bloodstained lathi does not inspire confidence. Even otherwise this sole circumstance is not sufficient to connect the appellant with the alleged crime.

10. In view of the aforesaid discussion, we are of the view that the prosecution has failed to prove the case against the appellant. The trial court has committed error in convicting him on the charge of murder of Devi Singh.

11. Consequently, the appeal is allowed. The judgment of trial court – Additional Sessions Judge (Fast Track), Pratapgarh dated 12.6.2002 is set aside. The appellant Nahar Singh S/o Madhu Singh is acquitted of the offence under Sections 302 and 120-B I.P.C. The appellant is in Jail. He shall be released forthwith, if not required in any other case.

(R.P. VYAS), J. **(N.N.MATHUR), J.**

BKS/-